IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7739 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAVAIKHAN UMARKHAN BABI

Versus

SETTLEMENT COMMISSIONER

Appearance:

MR PRASHANT G DESAI for Petitioners

MS KATHA GAJJAR, AGP for Respondent No. 1

MR YOGESH S LAKHANI for Respondent No. 3, 4, 5, 6

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 06/12/2000

ORAL JUDGEMENT

1. Having heard Shri Prashant G.Desai for the petitioners, Ms.Gajjar for respondent nos.1 & 2 and Shri YS Lakhani for respondent nos.3 to 6, it is proposed to dispose of this petition at the admission stage.

2. Detailed narration of facts giving rise to this petition and series of litigations need not be narrated in detail. In short, it may be stated that the dispute is related to survey nos.817/2, 815, which, according to the petitioners, is owned and possessed by them but, it was wrongly included in the consolidation operations alongwith survey nos.818, 820, 821 and 822 in the name of Mumrejkhan. The petitioners are not raising any dispute regarding survey nos.818, 820, 821 and 822. However, their grievance is that, survey nos.817/2 and 815 have wrongly been included and clubbed in the aforesaid survey numbers, as a result of which, one new block no.782/2 was given. For correction of mistake, the petitioners have been running from pillar to post and have been exhausting remedies under the Bombay Prevention of Fragmentation and Consolidation Holdings Act, 1947 but, with no result. Civil Suit No.66/99 was also filed by them in the Court of Civil Judge (S.D.), Mehsana, in which, they applied for interim injunction, which was refused. Consequently, appeal was filed against the order rejecting the injunction application, and in that appeal, by consent it was agreed that survey no.815 will not be sold, whereas survey no.817/2 can be sold.

3. The petitioners also moved authorities and ultimately filed revision before the respondent no.1. However, the respondent no.1 informed by letter dated 2-9-1999 that the petitioners have to file their objections under sec.20(1) and 30(2) of the Bombay Fragmentation & Consolidation Holdings Act before the appropriate authority and the said revision application is not maintainable.

4. A review application was also moved, which, according to the learned counsel for the petitioner is pending and no decision has been taken, nor any date has been given. Learned AGP informs that the review application will be taken up in due course, but she is not able to tell as to what will be the due course when the review application of the petitioners will see the light of the day.

5. From para-(5.2) of the counter affidavit of Settlement Commissioner, it is clear that there is no dispute that the Additional Chief Secretary (Appeals), Revenue Department, under sec.35 of the Act has revisional powers. In view of this admission and perusing sec.35 of the Bombay Prevention of Fragmentation and Consolidation Holdings Act, it is clear that the State Government or the Commissioner in respect of such

matters as the State Government may by general or special order specify in this behalf may at any time for the purpose of satisfying itself or himself as the case may be, as to the legality or propriety of any order passed by any officer under this Act call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it or he, as the case may be, thinks fit. This section clearly empowers the State Government or the Commissioner to entertain and decide revisions.

6. In view of para-(5.2) of the counter affidavit of the Settlement Commissioner and sec.35 of the Act, Shri Prashant G.Desai, learned counsel for the petitioners informs that the petitioners will be moving revision application before the Additional Chief Secretary (Appeals), Revenue Department, Ahmedabad, under sec.35 of the Act within a week and he requests that the said authority may be directed to decide the revision on merits and that the matter may not be taken like a shuttle cock directing the petitioners to approach this authority and that authority. The request seems to be reasonable.

7. The petition is, therefore, finally disposed of with the direction to the petitioners to move revision application under sec.35 of the Act before the Additional Chief Secretary (Appeals), Revenue Department, Ahmedabad, which shall be decided by the said authority within a period of three months from the date of filing of the revision application before him by a reasoned order on merits in accordance with law. No order as to costs.

December 6, 2000. [D.C. Srivastava, J.]

/sakkaf